

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DONALD MIDDLEBROOKS,)	
)	CAPITAL CASE
Plaintiff,)	No. 3:19-cv-01139
)	
v.)	Consolidated with
)	No. 3:18-cv-01234
LISA HELTON, et al.)	
)	JUDGE CAMPBELL
Defendants.)	

**MOTION TO TEMPORARILY REOPEN CASE
AND TO ISSUE ORDER FOR PRESERVATION OF EVIDENCE**

Plaintiff Donald Middlebrooks, by counsel, pursuant to *John B. v. Goetz*, 531 F.3d 448 (6th Cir. 2008), moves this Court to temporarily reopen this matter for the sole purpose of entering an order for the preservation of evidence. Beyond asking that this case be temporarily opened for this limited purpose, Plaintiff has no objection to the Defendants' contemporaneously filed Motion to Extend Stay of Proceedings.

This motion is filed as the Stay requested by Defendants is of indefinite length, and during the duration of such stay there is a significant risk that relevant documents may be lost or destroyed in "the regular course of business." Moreover, based on past history, there is a heightened concern that evidence could be lost. Thus, Plaintiff respectfully asks that the following be ordered:

1. Defendants shall preserve all evidence, stored in any format, including but not limited to paper, physical, electronic, digital, video, or photographic, that may be relevant to future litigation in this cause regarding Tennessee's execution of persons sentenced to death.

2. Defendants shall preserve evidence that they believe is not subject to disclosure due to privilege or other protection. Objections to the disclosure of such evidence may be addressed if and when this case proceeds to discovery.

3. Defendants shall preserve all evidence that was generated and/or preserved by *former* employees of Defendants. That is, files, cell phones and computers belonging to former employees should not have their contents deleted as part of "the regular course of business." Similarly text messages, and emails sent or received by such former employees should be preserved.

In further support of this Motion, Plaintiff contemporaneously files a Memorandum of Law.

Respectfully Submitted,

FEDERAL PUBLIC DEFENDER FOR THE
MIDDLE DISTRICT OF TENNESSEE

KELLEY J. HENRY
Supervisory Asst. Federal Public Defender

AMY D. HARWELL
Asst. Chief, Capital Habeas Unit

RICHARD LEWIS TENNENT
KATHERINE DIX
MARSHALL JENSEN
Asst. Federal Public Defenders
810 Broadway, Suite 200

Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265

/s/ Kelley J. Henry
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that on January 12, 2023, I filed this motion and response by means of the Official Court Electronic Document Filing System, CM/ECF, for the Middle District of Tennessee, which will email a copy to opposing counsel:

Scott Sutherland, Deputy Attorney General
Dean Atyia, Asst. Attorney General
Miranda Jones, Asst. Attorney General
Mallory Schiller, Asst. Attorney General
Cody N. Brandon, Asst. Attorney General
John R. Glover, Asst. Attorney General
Office of the Attorney General and Reporter
Law Enforcement and Special Prosecutions Division
P.O. Box 20207
Nashville, Tennessee 37202-0207.

Additionally, counsel has served a copy of this motion on counsel for Terry King, via email:

Alex Kursman
Lynne Leonard
Anastassia Baldrige
Hayden Nelson-Major
Assistant Federal Defenders
Federal Community Defender for the E.D. Penn.
Suite 545 West, The Curtis
601 Walnut St.
Philadelphia, PA 19106
(215) 928-0520
alex_kursman@fd.org
lynne_leonard@fd.org
ana_baldrige@fd.org
hayden_nelson-major@fd.org

David Esquivel
Sarah Miller
Jeremy Gunn
Michael Tackeff
Bass, Berry & Sims
150 Third Ave. South
Nashville, TN 37201
(615) 742-6200
desquivel@bassberry.com
smiller@bassberry.com
jeremy.gunn@bassberry.com
michael.tackeff@bassberry.com

Alice Haston
Amy Rao Mohan
Christopher C. Sabis
Sherrard Roe Voight & Harbison, PLC
150 Third Ave. South
Suite 1100
Nashville, TN 37201
(615) 742-4539
ahaston@srvhlaw.com
amohan@srvhlaw.com
csabis@srvhlaw.com

/s/ Kelley J. Henry
Counsel for Plaintiff